

CIVIL WRIT JURISDICTION CASE No.793 OF 1988

IN THE MATTER OF AN APPLICATION UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA.

Subhas Chandra Jha son of Shri Durga Nand Jha, resident
Of Karma, Police Station- Alam Nagar, District- Madhepura
At present working as ' Adeshpal' in the office of
Registrar, Kameshwar Singh Darbhanga Sanskrit University,
Darbhanga.

-----Petitioner.

-Versus-

1. Kameshwar Singh Darbhanga Sanskrit University
Darbhanga through its Vice Chancellor.
2. Registrar, Kameshwar Singh Darbhanga Sanskrit
University, Darbhanga.

-----Respondent Ist set.

3. Anil Kumar Jha, son of not known.
4. Ashok Kumar Sharma, son of not known.
5. Arjun Choudhary, son of not known.
6. Uma Nath Mishra, son of not known.
7. Jagarnath Jha, son of not known.
8. Dharma Narain Jha, son of not known.
9. Dhanpati Mishra, son of not known.
10. Nitya Nand Jha, son of not known.
11. Phuldeo Jha, son of not known.
12. Mithilesh Kumar Lal, son of not known.
13. Yogendra Choudhary, son of not known.
14. Rajendra Choudhary, son of not known.
15. Ram Bilas Saha, son of not known.
16. Lakshman Mishra, son of not known.
17. Vijay Kumar Sinha, son of not known.
18. Baidyanath Jha, son of not known.
19. Shayamjee Jha, son of not known.
20. Shayam Jha, son of not known.
21. Shailesh Chandra Jha, son of not known.
22. Sudarshan Mishra, son of not known.
23. Sudhir Jha, son of not known.
24. Santosh Kumar Jha, son of not known.
25. Harimohan Jha, son of not known.
26. Harishankar Jha, son of not known.
27. Binod Shankar Jha, son of not known.
28. Kaushal Kishore Mahto, son of not known.
29. Satish Kumar Sharma, son of not known.

All are at present working in the office of Kameshwar
Singh Darbhanga Sanskrit University Darbhanga through
its registrar.

----- Respondents 2nd set.

30. Brahmachari Surendra Kumar, son of not known Vice
Chancellor, Kameshwar Singh Darbhanga Sanskrit
University, Darbhanga.

----- Respondent 3rd set.

P R E S E N T

THE HON'BLE JUSTICE SMT. SHEEMA ALI KHAN

S.A.Khan,J.

This writ application is being heard on remand after the

order passed in L.P.A. No.446 of 1999 with L. P. A. No. 479 of 1999 on 30.8.2001.

This writ application has been filed by Subhash Chandra Jha for quashing the order dated 25.1.1988 issued by the Registrar of Kameshwar Singh Darbhanga Sanskrit University(hereinafter referred to be as 'the University')by which 27 class-III employees working on daily wages have been appointed and regularized on vacant and sanctioned posts in the prescribed scale.

The other prayer of the writ petitioner was that he was entitled for promotion on Class-III post in the said University.

This Court while deciding the issues has stated that “ It is made clear that as the private respondents were not appointed against the sanctioned post falling within the staffing pattern, order of regularization is not valid. The case is not covered by the Full Bench decision of this Court in the case of Braj Kishore Singh Vs. The State of Bihar and others , 1997(1) P.L.J.R., 509 in which the case of appointments were not against the post fallen within the staffing pattern which were treated as sanctioned post and in that context it was held that the persons appointed continuing in service of 17years against the sanctioned post appointed after an advertisement, a direction for their regularization should be given”

The second prayer of the writ petitioner, however, was rejected indicated by the court on the ground that the University had taken stand that no person junior to the petitioner had been granted promotion to Class III post.

The private respondents filed a Civil Review application numbered as Civil Review No.144 of 1998 challenging the order by which the private respondents were held to be not working against the sanctioned post or according to the staffing pattern of the University.

The submissions made on behalf of the private respondents (review petitioners) in the Civil Review application was that the University had accepted that the regularization of the petitioners was made on the direction of the State Government.

The court observed that the facts aforesaid was not a ground for review and gave leave to the review petitioners to file an appeal against the order of the Learned Single Judge. Accordingly, the private respondents of C.W.J.C. No.793 of 1988 (review petitioners) filed a Letters Patent Appeal. In course of hearing, the L.P.A. it came to light that the affidavit of the University did not contain correct facts. The Division Bench has taken serious note of the lapses on behalf of the University. Ultimately, the L.P.A. court held as follows:

“Let this be the end of this chapter. Mr. Tara Kant Jha, senior advocate appearing on behalf of the University mentions that reliefs which the petitioners were meant to receive, now that the mistakes have been accepted. The reliefs on the writ petition will be considered with equal measure and would be processed accordingly.”

The Court further held.....”

“.....Clearly, this Court is not judging the judgment on the writ petition in appeal. The judgment with incorrect facts having been given by one party is not binding and ultimately directed as follows:

“ This appeal stands consigned to the record and the matter will necessarily need to be reviewed on the writ petition more so as the University itself has filed a review petition. However, the record of this Letters Patent Appeal will be available before the Division of the Court so that it may see for itself that the mistakes as were on the writ petition record originally are now accepted and due corrections are being applied for to correct the incorrect record. But, the record is of the writ court. The judgment is not wrong, it was the record which is now accepted as wrong with correct facts being kept away. Appropriately this Court in appeal should not correct the judgment if withheld facts have now resurfaced. The court of original jurisdiction will consider the new facts, hidden so far, and then would be free to



render judgment on the state of the record.”

The final order in this case should be read with along with the order, dated 23.3.2001 in the letters patent appeal wherein the court has considered that the University had placed facts which were misleading and resulted in the decision of learned single Judge. In the order, dated 23.3.2001 this court had considered the case of the writ petitioner with respect to promotion and the records of the University which were in contravention to the affidavit filed on its behalf.

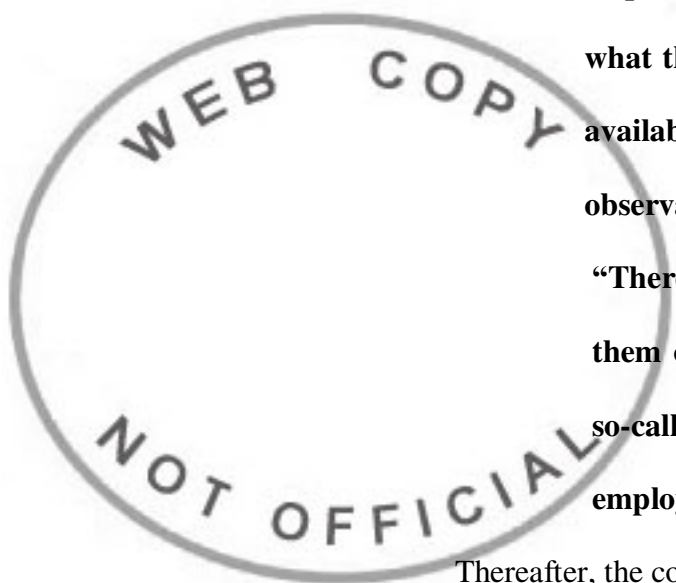
With respect to the respondents the court observed :

“In so far as the first set or the second set respondents were concerned, on the basis of what the University states, that nothing was available to affect promotion, the observation of the court was :

“There can be no occasion to regularize them or give them valid confirmation. The so-called exercise of confirming such employees, therefore, remained a futility.”

Thereafter, the court observed as follows :

“As admittedly in this case the post has not been sanctioned and the University has no power to create a post without sanction of the State Government. As such, the regularization of the respondents second



set is nullity in the eye of law and on this ground alone the impugned order is not sustainable in law.”

“The observation rested on the submission of the University, regard being had to the circumstances, that such of those employees, who are III and IV grade, as they were continuing for more than 5 years, the sanction of the Government was awaited. Thus, the University regularized the services of the employees in anticipation. The plea of the University notwithstanding, on the observation of the court, the respondents second set, after the judgment stood relieved.”

Under these circumstances CWJC No. 793 of 1988 has to be re-heard and considered by this court.

As stated above, the writ petitioner has claimed two reliefs; firstly that the order, dated 25.1.1988 issued by the Registrar of the University with respect to 27 Class III employees on daily wages be quashed and secondly to consider the promotion of the petitioner on a Class III post of a Routine Clerk.

Ms. Namrata Mishra appearing on behalf of the petitioner submits that her client has been granted the second relief i.e. he has been promoted on a Class III post and as such she does not wish

to pursue the writ petition and prays for its withdrawal.

The prayer on behalf of the petitioner for withdrawing the writ petition has been opposed by the counsel for the private respondents to the extent that counsel for the respondents want a clarification from this court with respect to their future.

It has been submitted by counsel appearing on behalf of the respondents that the stand taken by the respondent university is varying from stage to stage, and the appeal court has remanded the matter back to the first court for consideration of the reliefs to be granted to the petitioner, it would become necessary for this court to clarify/answer with respect to the reliefs claimed by the petitioner inasmuch as the petitioner had prayed that the regularization of the respondents 2nd set be quashed.

To clarify the position this court now turns to the affidavit filed on behalf of the University in CWJC No. 793 of 1988.

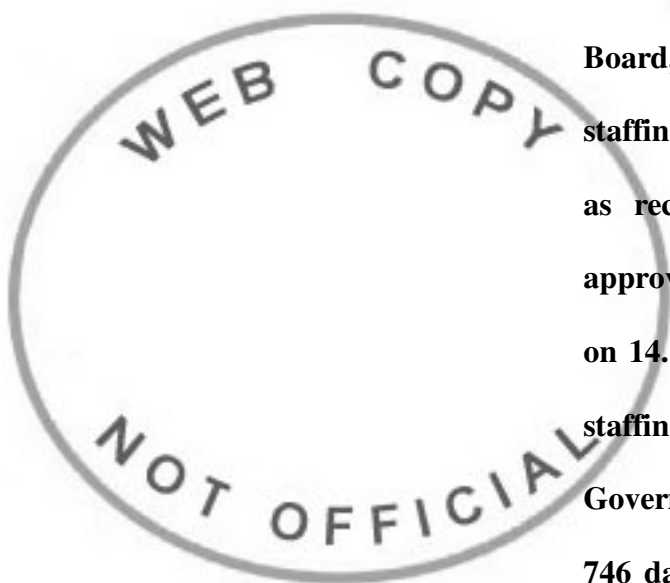
The stand of the University at paragraph 12 is quoted below :

“That with regard to the statements made in paragraph 19, it is stated that since daily wage Class IV and III employees were continuing for more than 5 years and the University had already written to the Government for sanctioning requisite posts. So in anticipation of Government approval, their services have been regularized.”

With respect to status of the respondents, the affidavit

filed in Civil Review by the University is somewhat different At paragraph 8 of the counter affidavit filed in Civil Review No. 144/1988 the averments are as follows :

“That in reply to the averments made in paragraph Nos. 6 & 7 the deponent submits that it is a matter of record. It is stated that the regularization of the Review petitioners was made by the university pursuant to the policy decision of the State Government. For regularization of the persons working within the staffing pattern. It is further pertinent to state here that the Bihar Inter Universities Board, Patna, approved the norms for staffing pattern in Universities and colleges as recommended by the Committee and approved by Bihar Inter Universities Board on 14.1.1980 and since the said approval of staffing pattern was accepted by the State Government so a letter containing memo no. 746 dated 2nd June, 1986 was issued under the signature of Director (Higher Education) for fixation of the non-teaching employees working on the basis of staffing pattern and an inquiry committee was constituted which visited the entire

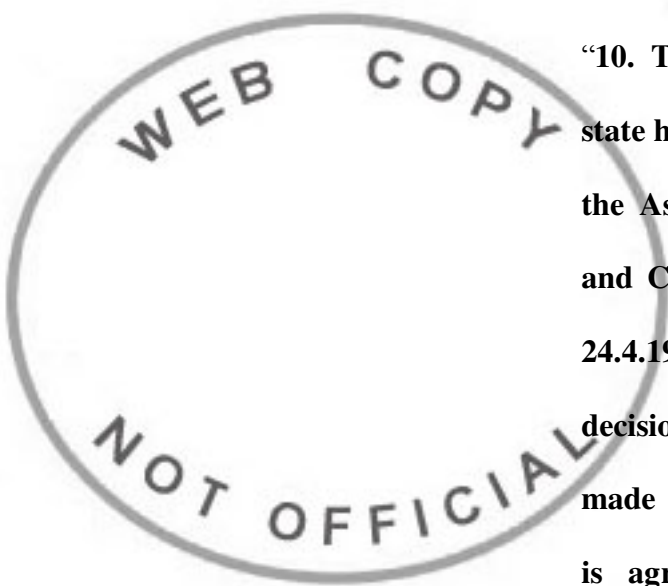


Universities of the State including the deponent University and after examining the entire matter / records a direction was given by the State Government for regularization of the persons working under the staffing pattern.”

Paragraphs 9, 10 and 11 of the counter affidavit filed in the review petition are as follows :

“9. That it is further pertinent to state here that thereafter the Review petitioners were interviewed, selected and regularized by the then Vice Chancellor of the University.

“10. That it would not be out of place to state here that as per the agreement between the Association of Bihar State Universities and Colleges Karmchari Mahasangh dated 24.4.1989 and the State Government a decision was taken and an agreement was made by saying that the State Government is agreed to regularize the services of employees working under staffing pattern and the said decision was again communicated to the University vide a letter containing Memo No. 674 dated 1st May, 1989.



“11. That thereafter again a direction was given by the State Government vide letter bearing No. 894 dated 11.7.1989, whereby the Vice Chancellor of all the Universities of the State of Bihar were informed about the decision of the State Government for regularization of the services of the employees working under staffing pattern and for that purpose an inquiry was to be made at the level of the University and a direction was given to submit the report along with the list of the employees working under staffing pattern.”

With respect to the aforesaid stand, the University had also annexed the documents in question. Therefore, on perusal of the two affidavits filed by the University, it is apparent that on one hand the University claims that the respondents were not working against sanctioned post and on the other hand accepts the fact that the respondents were working in accordance with the staffing pattern as fixed by the State Government for the Universities of Bihar.

There are two aspects with respect to the employees of affiliated / constituent / taken over colleges. In the colleges aforesaid there were six unsanctioned posts. When the question of taking over of these colleges was considered, several dispute arose with respect to persons who had been working in these colleges beyond the sanctioned

strength which led to filing of writ petition and finally this court took a decision with respect to such employees in the case of Braj Kishore Singh Vs. The State of Bihar & others reported in 1997 (1) PLJR, 509. Therefore, the submission of the respondents is that even though they may not have been working against the sanctioned post but they came within the staffing pattern.

Since the writ petitioner is withdrawing the writ petitioner, any observation made in the order, dated 17.4.1998 will automatically merge into the final order and cannot be held by this court that the observations made on 17.4.1988 with respect to the writ petition would hold the field. Their case will be covered by the decision in the case of Braj Kishore Singh Vs. The State of Bihar.

In the conclusion I may observe that any party being aggrieved will have the right to approach the proper forum for redressal of their grievances.

In the result, this writ petition is disposed of with the aforesaid observations.

Patna High Court,
December 12, 2008,
NAFR / Haque

(Sheema Ali Khan, J.)